

DEPARTMENT OF CORPORATIONS
California's Investment and Financing Authority

WAYNE STRUMPFER
Acting Corporations Commissioner
Sacramento, California

IN REPLY REFER TO:
FILE NO: OP 6981 CRMLA

COMMISSIONER'S OPINION 06/1 CRMLA

THIS INTERPRETIVE OPINION IS ISSUED BY THE COMMISSIONER OF CORPORATIONS PURSUANT TO FINANCIAL CODE SECTION 50312 OF THE CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT. IT IS APPLICABLE ONLY TO THE TRANSACTION IDENTIFIED IN THIS OPINION REQUEST, AND MAY NOT BE RELIED UPON IN CONNECTION WITH ANY OTHER TRANSACTION.

John D. Socknat
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street NW, 5th Floor
Washington, DC 20036-1609

Re: Universal American Mortgage Company, LLC

Dear Mr. Socknat:

The Department of Corporations ("Department") has reviewed and considered your letters dated February 2, 2005 and September 28, 2005, requesting an interpretive opinion to address whether Universal American Mortgage Company, LLC's (UAMC) proposed "kiosks" fall within the notice requirements for branch offices of Financial Code Section 50124(a)(10).

You represent that Universal American Mortgage Company, LLC ("UAMC"), a licensed lender under the California Residential Mortgage Lending Act ("CRMLA"), wishes to establish kiosks, to be located near home construction sites and other public locations. You further represent the proposed kiosks as follows:

- The kiosks are stand-alone computer terminals that function as a web-based application platform. Consumers may use the kiosks to merely submit applications and necessary information to UAMC for obtaining loan pre-qualifications. Information submitted by consumers will be transmitted to loan officers and will not be stored at the kiosks.

♦ Securities ♦ Franchises ♦ Off-Exchange Commodities ♦ Investment and Financial Services ♦
♦ Independent Escrows ♦ Consumer and Commercial Finance Lending ♦ Residential Mortgage Lending ♦

- UAMC will not employ any loan officers to work at the kiosks. Loan officers may occasionally visit the kiosks, but will not be assigned to work at a particular kiosk and will not maintain regular office hours at the kiosks. Generally, no one from UAMC will be physically present at the kiosks. Consumers will have to call a toll-free number with their questions.
- The kiosks will not be used to communicate loan decisions nor fund loans.
- The services offered by the kiosks are much more limited than those offered through UAMC's website.
- There will be no contractual relationships between UAMC and the owners of the kiosk sites other than the payment of rent at fair market value, if any.

Financial Code Section 50124(a)(10) requires UAMC to notify the commissioner, in writing, by certified mail, return receipt requested, prior to opening a branch office in California or changing UAMC's business location(s) or branch office(s) from which activities subject to the CRMLA are conducted. However, based on the specific facts as represented and described above, the Department has determined that the proposed kiosks you describe are not considered branch offices under the CRMLA at this time. Thus, the proposed kiosks do not trigger the notice requirements of Financial Code Section 50124(a)(10).

Dated: May 18, 2006
Sacramento, California

WAYNE STRUMPFER
Acting California Corporations Commissioner

By _____
TIMOTHY L. Le BAS
Deputy Commissioner and General Counsel
Office of Law and Legislation
(916) 322-3553

WEINER BRODSKY SIDMAN KIDER PC

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TEL 202 628 2000
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February 2, 2005

California Department of Corporations
Office of Law and Legislation
1515 K Street, Suite 200
Sacramento, CA 95814

Re: Request for Interpretative Opinion

Dear Sir or Madam:


This letter is submitted to request an interpretative opinion regarding whether "kiosks," as described below, are required to be licensed as branches under the California Residential Mortgage Lending Act ("RMLA"). We recently posed this question to DiAun Burns, Special Administrator at the California Department of Corporations ("DOC"). Ms. Burns advised us the DOC had not previously considered the issue and suggested we seek an interpretative opinion from your office, pursuant to Cal. Fin. Code § 50312.

Our client, Universal American Mortgage Company, LLC ("UAMC"), is licensed as a Residential Mortgage Lender. UAMC wishes to establish "kiosks," to be located near home construction sites and other public locations. A kiosk is a stand-alone computer terminal that functions essentially as a web-based application platform. Potential borrowers may input information in order to obtain a prequalification or to submit loan applications. All loan applications and other traffic on the kiosks would be handled by licensed branches. No information would be stored in the computer terminal. A kiosk would not be staffed by employees or otherwise function as or resemble a traditional branch office.

RMLA licensees are required to notify the commissioner in writing prior to the opening of a branch office. Cal. Fin. Code § 50124(a)(10). We note that "branch office" is not defined in the RMLA; however, it appears that the proposed kiosks do not fit the traditional notion of a branch office. Instead, the proposed kiosks are analogous to web-based application platforms that consumers access from their homes, which do not require branch licensing.

We appreciate your consideration of this issue. Please do not hesitate to contact me at 202-628-2000 if you have any questions in connection with this request for an interpretative opinion. Thank you.

Sincerely,


Suzanne De Armond Mucchetti

cc: Carmen D. Tojeiro

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September 28, 2005

BY FEDERAL EXPRESS

Douglas Gooding
Senior Corporations Counsel
General Counsel's Office
Department of Corporations
71 Stevenson Street, Suite 2100
San Francisco, CA 94105-2980

Re: Request for Interpretive Opinion; Universal American Mortgage Company, LLC

Dear Mr. Gooding:

We are in receipt of your June 10, 2005 letter requesting additional information regarding the activities to be conducted at the "kiosks" our client, Universal American Mortgage Company, LLC ("UAMC"), proposes to establish in home construction trailers maintained by and/or model homes built by its affiliated homebuilders, lobbies of office buildings where both UAMC and its affiliated homebuilders lease office space, and other public locations such as shopping malls. As you know, UAMC is seeking an interpretative letter to determine whether the opening of the proposed kiosks would trigger the notification requirements found in Cal. Fin. Code § 50124(a)(10) of the California Residential Mortgage Lending Act ("RMLA") prior to the establishment of the kiosk.

As noted in our letter dated February 2, 2005 and our recent telephone conversation, a kiosk is a stand-alone computer terminal that functions as an Internet based application platform. We believe that such kiosks do not trigger the notification requirements of Cal. Fin. Code § 50124(a)(10). In support of this position, we provide additional information on each of the following topics in the paragraphs that follow: (1) how the kiosks differ from traditional branch offices; (2) how loan decisions will be made when consumers use the kiosks; (3) how loan funding will occur when consumers use the kiosks; (4) how the services offered by UAMC on its web page (www.uamc.com) and the services offered to consumers who use the kiosks differ; (5) the nature of the relationship between UAMC and the contractors and developers whose sites are where the kiosks are placed; and (6) additional information on other laws supporting our position, and whether UAMC has addressed this issue in other states.

Traditional Branch Offices

The proposed kiosks do not fit the traditional notion of a branch office. Unlike traditional branch offices, UAMC will not employ any loan officers to work at the kiosks. However, loan officers may occasionally visit the kiosks, but such loan officers will not be assigned to work at a particular kiosk, and they will not maintain regular office hours at the kiosk. Because loan

officers will not generally be present at the kiosks, no one from UAMC will generally be physically present to answer questions that arise while the consumers submit their information. If consumers have questions, they will generally need to contact UAMC directly via an eight hundred number provided to all kiosk users.

Also, unlike traditional branch offices that receive and then store information received from consumers, the kiosks will not store any information received from consumers on their hard drives. This information will be retained in accordance with applicable state and federal law at the UAMC office that directly contacts the consumers. In this regard, the kiosks are similar to Internet based application platforms accessed by consumers from their homes, which do not trigger the notification requirements of the RMLA.

Loan Decisions

The proposed kiosks will not be used to communicate loan decisions to potential borrowers. Consumers may use the kiosk to merely submit applications to UAMC and/or the information necessary to obtain pre-qualifications. Once the information is submitted, it will be downloaded into the loan origination software used by UAMC. Downloading the information into the loan origination software used by UAMC allows its loan officers to analyze the data provided and then directly contact the consumers to discuss the available loan programs and products with the consumers. In this regard, the kiosks are also similar to Internet based application platforms accessed by consumers from their homes, which do not trigger the notification requirements of the RMLA.

Funding of Loans

The funding of loans would not be accomplished through the proposed kiosks. Once UAMC loan officers have discussed the appropriate loan programs and products with the consumers and a closing date has been established, UAMC will disburse the necessary funds to closing agents. Thus, funding of the loans by way of electronic funds transfers would not be accomplished through the kiosks.

Limited Services

The services offered by the kiosks would be much more limited than those offered by UAMC on its web page (www.uamc.com). The only services available at the kiosks will be submission of applications and the information necessary to obtain pre-qualifications. In addition to offering these services, UAMC's web site also offers consumers all of the following services: (1) information on the process of obtaining a mortgage including the definitions of key terms related to this process; (2) general information about UAMC; (3) contact information for UAMC; (4) UAMC branch location information; (5) UAMC state licensing information; (6) loan calculators; and (7) an overview of UAMC's privacy policy. None of these services will

available to consumers using the kiosks. The services available at the kiosks will be limited to submitting applications and obtaining pre-qualifications.

Nature of Relationship

There will be no contractual relationships between UAMC and the contractors and developers whose sites are where the kiosks are placed. UAMC is a subsidiary of the Lennar Corporation. The Lennar family of companies includes approximately twenty homebuilders as well as several financial service companies, including UAMC. UAMC intends to place kiosks in all of the following locations: (i) construction trailers of its affiliated homebuilders, (ii) model homes built by its affiliated homebuilders, (iii) lobbies of office buildings where both UAMC and its affiliated homebuilders lease office space, and (iv) other public locations such as shopping malls. UAMC does not pay any fees or monies in order to place its kiosks at various locations, except where the landlord or owner requires UAMC to pay rent for the use of the space occupied by the kiosk. Any such rents will be at fair market value. UAMC will not share, directly or indirectly, any of its fees or income generated from its mortgage operations with these landlords or owners.

Additional Information

Based on our review of other provisions of the California Financial Code as well as applicable laws and regulations in Arizona, Nevada, Oregon, and Washington, it appears that the kiosks would not constitute a branch office under these statutes and/or regulations. However, please note that we have not addressed this issue with the regulators of these states.

As you mentioned in your letter, the RMLA does not define a branch office, but other provisions of the California Financial Code (albeit in a section that is not directly applicable to mortgage lenders) defines a branch office to exclude an automated teller machine (ATM) or a remote service facility (RSF). *See* Cal. Fin. Code § 500. Just like ATMs and RSFs, the kiosks will be unstaffed electronic facilities owned and operated by a lender. However, the kiosks will not provide any information or tangible item directly to the consumer upon the completion of the transaction other than a pre-qualification certificate to borrowers who meet the qualifying parameters for a particular loan program. Other than pre-qualification certificates, consumers will not receive anything directly from the kiosks when the transaction is complete. In addition, consumers will be unable to print anything other than the pre-qualification certificate from the kiosks, and they will also be unable to save any information they entered. Because the services offered by the kiosks will be even more limited than those provided by ATMs and RSFs, it appears that the kiosks would not trigger the notification requirements found in Cal. Fin. Code § 50124(a)(10).

In connection with this request, we have reviewed the laws in various states neighboring California to determine if they would treat the kiosks as branch offices. Based on this review, it

is similarly unclear whether the kiosks would need to be licensed as branch offices.¹ Our reading of these statutes and/or regulations in addition to our understanding of the intent behind the licensing of branch offices suggest that the kiosks should not be considered branch offices. Unlike traditional branch offices, the kiosks will be unstaffed and UAMC will not have direct contact with the borrowers. We also note that funding and/or loan decisions will not be made directly by the kiosks. In addition, consumers will be unable to obtain any information directly from the kiosks. For these reasons, we believe the laws in the states neighboring California appear to support our position that the kiosks are not branch offices.

Conclusion

For the reasons outlined above, it is our position that UAMC should not be required to notify the Commissioner in writing prior to the opening of the kiosks as required by Cal. Fin. Code § 50124(a)(10) of the RMLA since the kiosks are similar to Internet based application platforms accessed by consumers from their homes, which do not trigger the notification requirements of the RMLA.

Please contact me at (202) 628-2000 if you have any questions or require further information.

Sincerely,



John D. Socknat

¹ See Ariz. Admin. Code R20-4-102 (defining a branch office as any location within or outside Arizona, including a personal residence, but not including a licensee's principal place of business in Arizona, where the licensee holds itself out to the public as a mortgage banker); Or. Admin. R. 441-860-0010(1) (defining a branch office as a location, separate from the principal place of business of the licensed mortgage banker, where the mortgage banker for compensation or in the expectation of compensation makes, negotiates or offers to make or negotiate a mortgage loan); and Wash. Admin. Code 208-660-010(7) (defining a branch office as a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker). Nevada does not appear to define the term branch office in the statutes and/or regulations governing the licensure of the branch offices of mortgage lenders. See Nev. Rev. Stat. §§ 645E.010 et seq. and Nev. Admin. Code §§ 645E.010 et seq.